

FILED

MAY 08 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ARTURO JUAREZ,

Petitioner - Appellant,

v.

JAMES E. HALL, Warden,

Respondent - Appellee.

No. 03-57094

D.C. No. CV-02-08360-DOC

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
David O. Carter, District Judge, Presiding

Submitted May 1, 2006^{**}
Pasadena, California

Before: LAY^{***}, KLEINFELD, and SILVERMAN, Circuit Judges.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

^{***} The Honorable Donald P. Lay, Senior United States Circuit Judge for the Eighth Circuit, sitting by designation.

Arturo Juarez appeals the district court's denial of his habeas petition challenging his jury conviction for kidnaping to commit robbery and carjacking. The Anti-Terrorism and Effective Death Penalty Act of 1996 requires that we affirm the last reasoned state court decision unless it was "contrary to, or involved an unreasonable application of" clearly established United States Supreme Court precedent.¹

Juarez argues that the trial court erred in giving a conspiracy instruction as a theory of liability where there was no conspiracy charged. But the state Court of Appeal found this error harmless and noted that Juarez was not convicted of conspiracy. Juarez contends that the harmless error rule does not apply, but he points to no Supreme Court case establishing that proposition. Nor can we find such a case. Finally, Juarez has not demonstrated that the error in giving the instruction, if any, could have mattered on the evidence in this case.

AFFIRMED.

¹ 28 U.S.C. § 2254(d)(1).